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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,159	09/12/2003	Jaime Salvador Vargas	NDNV-001	6784
7590 02/17/2006			EXAMINER	
Jaime S. Vargas 9 Eagle Hill Terrace Redwood City, CA 94062			ROGERS, KRISTIN D	
			ART UNIT	PAPER NUMBER
			3736	

DATE MAILED: 02/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/661,159

Applicant(s)

VARGAS, JAIME SALVADOR

Examiner

Kristin D. Rogers

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities: Under the section "Brief description of the drawings," paragraph [0020] has two periods. Examiner suggest the omission of one period.

Appropriate correction is required.

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2,4-8 and 10-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Zehel et al. (5251611). In regard to claims 1,10, and 13-17 Zehel et al. shows a shape transferring cannula with first rigidizing section 11, flexible steerable tip at distal end 12 of the first rigidizing section 11, second rigidizing section 10 coupled to first section 11, first and second sections being slidably coupled and parallel and co-

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axial, and proximal end 13 comprising control mechanism with advancing feature 15 and 40 (column 4, lines 35-40 and column 9, lines 18-21 Fig. 7.) In regard to claim 2, Zehel et al. shows first rigidizing section surrounding second rigidizing section, Figure 1. In regard to claims 4 and 11, Zehel shows first rigidizing section 11 comprising an accessory lumen 12a at distal end 12. In regard to claims 5 and 12, Zehel et al. shows accessory lumen 9 within the second rigidizing section. In regard to claims 6 and 7, Zehel et al. shows the first and second rigidizing sections that are coaxial and laterally parallel (Figure 1). In regard to claim 8, Zehel et al. shows a second rigidizing sheath section 10 comprising a plurality of cables 20 of equal radial distance from the central axis accompanied by tension means, pulley, and a cable guide channel 21 (column 7 lines 26-51).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zehel et al. Zehel et al. shows a shape transferring cannula comprising of a first and second rigidizing section in which the second section is surrounded by the first. In regard to claim 3, It would be obvious to interchange the first and second rigidizing section because neither present a critical design feature that would prevent performance of an

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identical function. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify Zehel et al. with a second rigidizing that surrounds the first rigidizing section since such modification would provide support for the first rigidizing section.

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zehel et al. in view of Secrest et al. (6666847). Zehel et al. shows a shape transferring cannula including a pulley tension means. Zehel et al. lacks disclosure of the pulley relative to the axis. Secrest et al. teaches a flexible cannula including a pulley 126 positioned off axis (Figure 2 and 3) of central lumen. Therefore it would have been obvious for one having ordinary skill in the art at the time of the invention to modify Zehel et al. with a pulley positioned off axis as taught by Secrest et al. for the purpose of receiving surgical instruments.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristin D. Rogers whose telephone number is 571.272.7293. The examiner can normally be reached on Monday through Friday 8:00am - 4:30pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571.272.4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KDR

  
MARK F. HINDENBURG  
SENIOR PATENT EXAMINER  
MAY 03 2006